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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WORLD SKATEBOARDING
FEDERATION, INC.,

Plaintiff,

v.

INTERNATIONAL SKATEBOARDING
FEDERATION, and GARY REAM,

Defendants.

No. 2:16-cv-02065-KJM-GGH

ORDER

This case arises from a contract that the parties allegedly formed in Switzerland concerning the creation of a commission tasked with organizing and planning the skateboarding events for the 2020 Olympic Games in Tokyo. Defendants International Skateboarding Federation (“ISF”) and Gary Ream move to dismiss the complaint brought by plaintiff World Skateboarding Federation, Inc. (“WSF”) for lack of jurisdiction. ECF No. 4. Plaintiff opposes. ECF No. 22. The court held a motion hearing on November 4, 2016, at which Karra Porter and Phillip Lowry appeared for plaintiff, and John Poulos and Richard Wickersham appeared for defendants. ECF No. 27. For the following reasons, the court GRANTS defendants’ motion.

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1 I. FACTUAL ALLEGATIONS

2 In and prior to 2006, the International Olympic Committee (“IOC”) began
3 exploring the possibility of bringing skateboarding to the Olympics. Compl. ¶ 13. Years later, as
4 the IOC actually considered including skateboarding in the 2020 Olympic Games, it invited “key
5 stakeholders” into discussions, including plaintiff WSF and defendant ISF. *Id.* ¶ 17. WSF’s
6 principal and founder, Tim McFerran, is a luminary in the skateboarding industry, and has led
7 efforts to expand competitive skateboarding across the world. *Id.* ¶¶ 25–47. By May 2015, of the
8 key stakeholders WSF was the largest and most active federation for skateboarding. *Id.* ¶ 36.
9 ISF, on the other hand, was formed by Ream in 2003, and the organization was largely inactive
10 through the end of 2014. *Id.* ¶ 49. In 2009, Ream called McFerran and introduced himself as the
11 President of ISF, *id.* ¶ 50; he told McFerran that his personal friend, Christophe Dubi was now the
12 IOC Olympic Games Executive Director and was going to help Ream get skateboarding
13 recognized in the 2012 Olympic Games, *id.* ¶¶ 50, 87. In the same conversation, Ream requested
14 that McFerran pay Ream \$200,000 for ISF to sanction an international skateboarding event
15 organized by McFerran. *Id.* ¶ 50. When McFerran refused to pay, Ream told McFerran he would
16 ensure McFerran was not a part of the Olympic Games unless he agreed to pay the \$200,000 fee.
17 *Id.*

18 In 2014 and 2015, McFerran and Ream engaged in discussions separately with the
19 IOC to bring skateboarding to the 2020 Olympic Games. *See id.* ¶¶ 74–75. During this time,
20 Ream and ISF held multiple meetings in California. In January 2015, in southern California, ISF
21 held an invitation-only meeting with members of the skateboarding industry. *Id.* ¶ 53. At that
22 meeting Ream bragged about his special relationship with IOC Executive Director Dubi, and
23 suggested that Dubi was helping him make ISF the official organizer for skateboarding at the
24 2020 Olympic Games. *Id.* ¶ 93. In February 2015, in Los Angeles, the IOC attended a meeting
25 with ISF board members that ISF described as an “emergency” meeting to discuss bringing
26 skateboarding to the 2020 Olympic Games. *Id.* ¶ 75. In March 2015, again in Los Angeles, ISF
27 held an additional invitation-only meeting, this time with associates of Ream. *Id.* ¶ 55.

1 On March 11, 2015, in Switzerland, the IOC’s Sports Director told ISF and WSF
2 they would have to work together for skateboarding to be included on the 2020 Olympic Games
3 program. *Id.* ¶¶ 17, 24, 76. The same month, in Turkey, an IOC representative reported that
4 “were it not for McFerran, skateboarding would not be considered for the 2020 Olympic Games.”
5 *Id.* ¶ 80. Around that time, Ream began falsely claiming to third parties that the IOC had selected
6 ISF as the International Federation, meaning the sole organizer, for skateboarding in order to gain
7 favor within the skateboarding industry. *Id.* ¶¶ 84, 89.

8 On March 15, 2016, the IOC invited McFerran and Ream to a meeting in
9 Switzerland, where WSF and ISF entered into an agreement to create a Tokyo 2020 Olympic
10 Skateboarding Commission (“Commission”) for the purpose of organizing and planning the
11 skateboarding events for the 2020 Olympic Games. *Id.* ¶ 106. The IOC appointed Ream as
12 Chairman of the Commission, *id.* ¶ 107, told McFerran he was to be an active participant in the
13 leadership, *id.* ¶ 116, and told Ream he would have to put the interests of the Commission above
14 those of ISF, *id.* ¶ 107. One of McFerran’s duties as a member of the Commission, a duty he was
15 assigned by the IOC, was to develop a list of contests and qualifying events. *Id.* ¶ 116. The IOC
16 also told McFerran it was a “good idea” for WSF to be the point organization for the Pan
17 American Games and Commonwealth Games. *Id.* Relying on the agreement to create the
18 Commission as well as the IOC’s promises, McFerran continued to incur expenses, *id.* ¶ 113, and
19 began negotiating and signing contracts with foreign governments regarding events that would be
20 qualifiers for the 2020 Olympic Games, *id.* ¶ 117.

21 On May 9, 2016, Ream and the IOC circulated a draft memorandum of
22 understanding meant to memorialize the agreement WSF and ISF entered into on March 15,
23 2016. *Id.* ¶ 120. The draft did not identify WSF as a member of the Commission. *Id.*

24 On May 12, 2016, the IOC told McFerran to meet the next day with Ream in
25 Anaheim, California, where Ream was attending a skateboarding conference. *Id.* ¶ 121. It is
26 unclear from the complaint whether McFerran attended this conference or met with Ream. What
27 is clear from the complaint, however, is WSF’s contention that Ream leveraged his personal
28 relationship with IOC Executive Director Dubi to position ISF as the sole organizer of

1 skateboarding events for the Olympic Games, to the detriment of WSF and McFerran. *See*
2 ¶¶ 88-95. As a result, on May 30, 2016, the IOC held a meeting with ISF without inviting WSF,
3 where the IOC and ISF agreed to a memorandum of understanding that excluded WSF from the
4 Commission. *Id.* ¶¶ 126–28.

5 II. PROCEDURAL BACKGROUND

6 On July 28, 2016, WSF filed a complaint against ISF and Gary Ream in the
7 Superior Court of California, Placer County, in which it pleads the following: (1) Breach of
8 Contract (defendant ISF), *id.* ¶¶ 140–46; (2) Breach of the Implied Covenant of Good Faith and
9 Fair Dealing (defendant ISF), *id.* ¶¶ 147–55; (3) Unfair Competition and Unfair Business
10 Practices (all defendants), *id.* ¶¶ 156–64; (4) for declaratory relief, *id.* ¶¶ 165–68; (5) for an
11 injunction, *id.* ¶¶ 169–75; and (6) breach of fiduciary duty (all defendants), *id.* ¶¶ 176–83.

12 On August 29, 2016, WSF removed the case to this court. ECF No. 1. The next
13 day, on August 30, defendants filed a motion to dismiss, alleging the court lacks jurisdiction.
14 Defs.’ Mot. to Dismiss (“Defs.’ MTD”) at 5–8, ECF No. 4-1. WSF opposes, Pl.’s Opp’n, ECF
15 No. 22, and defendants replied, ECF No. 24. For the following reasons, the court grants
16 defendants’ motion to dismiss for lack of jurisdiction.

17 III. DISCUSSION

18 Defendants argue they are not subject to the jurisdiction of this court because
19 defendants and the alleged contract formed in Switzerland do not have the requisite contacts with
20 California. Defs.’ MTD at 5–8. Alternatively, defendants seek to join necessary parties, *id.* at
21 8-11; request that plaintiff file an amended complaint with a more definite statement, *id.* at 11–13;
22 and/or provide an amended complaint that strikes immaterial, impertinent, and scandalous
23 allegations, *id.* at 13–14. The court reaches only the threshold jurisdictional question at this
24 juncture.

25 Defendants argue WSF’s claims must be dismissed because this court lacks
26 general and specific personal jurisdiction. Defs.’ MTD at 5–8. Plaintiff responds that the
27 complaint, supplemented by McFerran’s supporting declaration in opposition, sets forth sufficient
28 contacts to establish general and specific jurisdiction. Pl.’s Opp’n at 2–3.

1 Rule 12(b)(2) of the Federal Rules of Civil Procedure provides that a party may
2 move to dismiss a complaint for lack of personal jurisdiction. Although the defendant brings the
3 motion, it is the plaintiff's burden to establish the court's personal jurisdiction. *See Sher v.*
4 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). If the motion is based on written materials rather
5 than an evidentiary hearing, as in this case, the plaintiff need only make "a prima facie showing
6 of jurisdictional facts to withstand the motion to dismiss." *Brayton Purcell LLP v. Recordon &*
7 *Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (quotation omitted). In particular, the plaintiff
8 must convince the court the defendants' "conduct and connection with the forum State [is] such
9 that the defendants should reasonably anticipate being haled into court there." *Sher*, 911 F.2d at
10 1361 (quotation marks omitted) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.
11 286, 297 (1980)). After plaintiff makes a prima facie showing, the court resolves all contested
12 facts in plaintiff's favor. *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 741
13 (9th Cir. 2013), *aff'd sub nom. Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015). At the same
14 time, the plaintiff cannot establish jurisdiction by alleging bare facts without providing some
15 evidence of their existence, "by affidavit or otherwise." *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*,
16 551 F.2d 784, 787 (9th Cir. 1977); *accord Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d
17 1182, 1187 (9th Cir. 2002).

18 In resolving a Rule 12(b)(2) motion, the court may consider evidence outside the
19 pleadings, including affidavits and other materials submitted with the motion. *See Daimler AG v.*
20 *Bauman*, 134 S. Ct. 746, 752 (2014) (noting plaintiff in a Rule 12(b)(2) motion submitted
21 declarations and exhibits purporting to demonstrate defendant's contacts to the forum state). The
22 court may consider "relevant materials outside the pleadings without taking judicial notice of
23 those materials." *Lindora, LLC v. Isagenix Int'l, LLC*, 198 F. Supp. 3d 1127, 1136 n.3 (S.D. Cal.
24 2016) (citing *Stewart v. Screen Gems-EMI Music, Inc.*, 81 F. Supp. 3d 938, 951–52 (N.D. Cal.
25 2015)). Here, the court considers whether it has general or specific jurisdiction over defendants
26 in turn.

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1 A. General Jurisdiction

2 “A court may assert general jurisdiction over foreign (sister-state or foreign-
3 country) corporations to hear any and all claims against them when their affiliations with the State
4 are so ‘continuous and systematic’ as to render them essentially at home in the forum State.”
5 *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (quoting *Goodyear*
6 *Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). The standard for general
7 jurisdiction is exacting and is satisfied only by a showing of substantial operations in the state,
8 marked by “longevity, continuity, volume, economic impact, physical presence, and integration
9 into the state’s markets.” *Mavrix*, 647 F.3d at 1224. At the November 4, 2016 hearing, plaintiff
10 conceded the court does not have general jurisdiction over defendants in this case.

11 B. Specific Jurisdiction

12 In determining whether this court has personal jurisdiction, the court looks to the
13 personal jurisdiction rules of the forum state, provided the exercise of jurisdiction comports with
14 due process. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). California imposes no greater
15 restrictions than the United States Constitution, and as such, “federal courts in California may
16 exercise jurisdiction to the fullest extent permitted by due process.” *Id.*

17 A court may exercise specific personal jurisdiction over a non-resident defendant
18 whose “minimum contacts” with the forum state are “sufficient” in that they relate to the claims
19 made in a case. *Sher*, 911 F.2d at 1361. The minimum contacts inquiry focuses “on the
20 relationship among the defendant, the forum, and the litigation.” *Walden v. Fiore*, 134 S. Ct.
21 1115, 1121 (2014) (quotation omitted). The Ninth Circuit has established a three-pronged
22 conjunctive test for determining whether the plaintiff has alleged sufficient “minimum contacts”:

- 23 (1) The non-resident defendant must purposefully direct his
24 activities or consummate some transaction with the forum or
25 resident thereof; or perform some act by which he purposefully
26 avails himself of the privilege of conducting activities in the forum,
27 thereby invoking the benefits and protections of its laws; (2) the
28 claim must be one which arises out of or relates to the defendant’s

1 forum-related activities; and (3) the exercise of jurisdiction must
2 comport with fair play and substantial justice, i.e. it must be
3 reasonable.

4 *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting *Schwarzenegger v. Fred Martin*
5 *Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). These prongs are identified in shorthand fashion
6 as: (1) purposeful availment and direction, (2) forum-related conduct, and (3) reasonableness.
7 See *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007).

8 When a plaintiff seeks to invoke specific personal jurisdiction, the plaintiff must
9 establish jurisdiction for “each claim asserted against a defendant.” *Picot*, 780 F.3d at 1211
10 (citation omitted). If personal jurisdiction attaches as to one claim, but not others, the district
11 court may exercise pendent personal jurisdiction over any remaining claims that arise out of the
12 same “common nucleus of operative facts” as the claim for which jurisdiction exists. *Id.*

13 1. Purposeful availment and direction

14 Under the first prong, the plaintiff must establish defendants either purposefully
15 availed themselves of the privilege of conducting activities in California, thus invoking the
16 benefits and protections of its laws, or purposefully directed their activities toward California.
17 *Schwarzenegger*, 374 F.3d at 802; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). In
18 the Ninth Circuit, the “purposeful availment” requirement is satisfied if a defendant has taken
19 deliberate action within the forum state or if it has created continuing or ongoing obligations to
20 forum residents. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (citing *Hirsch v. Blue*
21 *Cross, Blue Shield of Kan. City*, 800 F.2d 1474, 1478 (9th Cir. 1986)). Under the rubric of
22 personal availment, the Ninth Circuit has held that “[i]t is not required that a defendant be
23 physically present within, or have physical contacts with, the forum, provided that his efforts are
24 purposefully directed toward forum residents.” *Id.* (quotations and citations omitted).

25 In *Cabbage v. Merchant*, for example, the Ninth Circuit held an Arizona hospital
26 personally availed itself of California’s jurisdiction for purposes of litigation of a malpractice
27 action. 744 F.2d 665, 669 (9th Cir. 1984). The hospital argued its doctors were not California
28 residents, it was not licensed in California, and it did not treat the plaintiff in California, but the

1 Circuit found California had jurisdiction because the hospital applied for and received
2 reimbursement from California’s Medi-Cal program, and solicited California residents through a
3 telephone listing distributed to forum residents. *Id.* at 668–69. The hospital’s conduct amounted
4 to “continuing efforts to provide services [to residents] in California,” *id.* at 670, and was
5 sufficient to establish specific personal jurisdiction over the Arizona hospital, *id.* at 672.

6 Similarly, in *Ballard*, 65 F.3d at 1498, the Ninth Circuit held an Austrian bank had
7 personally availed itself of jurisdiction in California, even though its physical contacts were
8 “quite limited.” The bank’s physical contacts to the United States and California consisted of
9 twenty-four business trips taken by bank officials, for business reasons unrelated to the case in
10 *Ballard*. *Id.* The Ninth Circuit still found the bank had personally availed itself of California’s
11 jurisdiction, however, because “more than 60 percent of [the bank’s] customers live[d] in the
12 United States [and American residents were] the beneficiaries of millions of dollars of [bank]
13 loans[; the bank] regularly mail[ed] account statements to its U.S. customers, and it at least
14 occasionally solicits new business from them[; and the bank] maintain[ed] ‘correspondent
15 accounts’ at several major U.S. financial institutions” for the purpose of giving bank access to
16 American customers. *Id.*

17 In this case, ISF and Ream held at least five corporate meetings and a focused
18 meeting for ISF officials in California, Compl. ¶ 7(a) and (c), and many of ISF’s general
19 members and members of its leadership reside in California, *id.* ¶ 7(d). ISF specifically held
20 meetings with the IOC in California to discuss questions about the 2020 Tokyo Olympics. *Id.*
21 ¶ 7(b). ISF advertises its California events on its website, it does business with California
22 corporations, and it is endorsed by California organizations. *Id.* ¶ 7(e)–(g). These contacts are
23 sufficient to demonstrate that ISF has purposefully directed its efforts towards California. *See*
24 *Carroll Shelby Licensing, Inc. v. Tango Classic Autos, Inc.*, No. 15-06264, 2015 WL 12765632,
25 at *4 (C.D. Cal. Dec. 10, 2015) (finding purposeful avilment where defendant maintained
26 passive website, traveled to California several times on business, and purchased and sold five cars
27 to California residents); *Hernandez v. City of Beaumont*, No. 13-00967, 2014 WL 6943881, at *5
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1 (C.D. Cal. Dec. 8, 2014) (finding purposeful availment where defendant maintained a passive
2 website and trained an individual at a tradeshow located in California).

3 2. Forum-related conduct

4 Once a plaintiff establishes personal availment, the plaintiff must show the claim
5 arises out of the defendants' forum-related activities. To satisfy this requirement, the plaintiff
6 must show the claim would not have arisen "but for" the defendants' contacts with the forum
7 state. *Ballard*, 65 F.3d at 1500. The question in this case can be formulated as follows: But for
8 defendants' contacts with California, would WSF's claims against defendants have arisen? *See*
9 *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 864 (9th Cir. 2003). The answer here
10 shows the court does not have jurisdiction over defendants.

11 The contract at issue in this case was formed between plaintiff and defendants in
12 Switzerland. Compl. ¶ 106. WSF has made no showing that any component of the contract was
13 negotiated or entered into in California, that any breach occurred in California, or that any of its
14 tortious claims arose in California. California may, as plaintiff alleges, be the center of the
15 skateboard universe, *see* Pl.'s Opp'n at 3, but this court fails to see how the Ninth Circuit's but-
16 for test is satisfied when the contract was formed out of the country (Switzerland); concerns
17 events scheduled to take place in another country (Japan); the defendants and concerned third
18 parties, including the IOC, based in Switzerland, all reside out-of-forum; and no activities related
19 to the breach of this contract occurred in California.

20 3. Reasonableness

21 The court need not reach the question of reasonableness.

22 IV. CONCLUSION

23 Because this court lacks jurisdiction over defendants, defendants' motion to
24 dismiss under Federal Rule of Civil Procedure 12(b)(2) is GRANTED. Federal Rule of Civil
25 Procedure 15(a)(2) provides that "[t]he court should freely give [a party leave to amend its
26 pleading] when justice so requires," and the Ninth Circuit has "stressed Rule 15's policy of
27 favoring amendments." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir.
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1 1989). Because amendment has not been shown to be futile, plaintiff is granted leave to amend
2 its complaint within fourteen (14) days of the filing of this order.

3 IT IS SO ORDERED.

4 DATED: March 24, 2017.

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7 UNITED STATES DISTRICT JUDGE
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